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July 1, 2020

VIA ECF

The Honorable Robert W. Lehrburger
United States Magistrate Judge
United States District Court for the Southern District of New York
500 Pearl Street, Room 1960
New York, NY 10007

USDC SDNY
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Re: Haley v. Teachers Insurance and Annuity Association of America, No. 1:17-cv-00855-JPO-RWL

Dear Judge Lehrburger:

Pursuant to Section B of the Appendix to Your Honor's Individual Practices, Defendant Teachers Insurance and Annuity Association of America ("TIAA") submits this letter to request that one number reflected on Dkt. 110, the transcript of the parties' June 12, 2020 appearance before Your Honor, be filed under seal. Specifically, TIAA requests that before making the transcript publicly available, the Court Reporter be directed to redact the specific dollar amount that Plaintiff's counsel stated that TIAA received in "spread compensation" for its collateral loan service. The proposed redaction appears on page 9, lines 2-3, of the transcript and is set forth in Exhibit 1 attached hereto. Plaintiff has consented to the relief sought in this letter motion.

The information TIAA seeks to have redacted concerns TIAA's confidential business information about the spread compensation it receives in offering certain services—specifically, the actual dollar figure that Plaintiff's counsel calculated, using confidential information that TIAA produced in discovery, of the difference between the amount of interest that borrowing participants paid and the amount borrowing participants were credited on loan collateral. Disclosure of this sensitive information to the public and competitors would provide insight into TIAA's confidential business operations and could cause competitive harm to TIAA. Under *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 124 (2d. Cir. 2006), the presumption of public access to judicial documents can be overcome if countervailing factors warrant confidentiality. The sealing of documents may be justified to preserve "higher values," including the need to protect an entity from "competitive injury." *Id.* at 124; *Tropical Sails Corp. v. Yext, Inc.*, 2016 WL 1451548, at *4 (S.D.N.Y. Apr. 12, 2016) (sealing sensitive business information). Consistent with the balancing test set forth in *Lugosch*, courts routinely permit parties to seal or redact business materials that, if disclosed, may result in competitive harm. *See, e.g., Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (granting motion to redact sensitive business data, strategies and policies).

Here, the factors weigh in favor of maintaining the confidentiality of the figure TIAA seeks to redact. The specific dollar figure that TIAA seeks to file under seal is the type of information reflecting a company's revenues that is treated as confidential for competitive harm reasons. *See, e.g., Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 608, 614 (S.D.N.Y. 1998) (holding confidential business information should be sealed, including: "breakdowns of defendants' revenues and

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expenses . . . and the amounts actually remitted by cable operators to HBO"); *see also Playtex Prod., LLC v. Munchkin, Inc.*, 2016 WL 1276450, at *11 (S.D.N.Y. Mar. 29, 2016) ("[T]he Court agrees with Plaintiffs that all of these statements" "related to [Plaintiffs'] sales and revenue" "should be redacted because Plaintiffs would be competitively harmed if they were revealed."). Further, this situation is distinct from *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 143 (2d Cir. 2016), as *Bernstein* involved allegations of impropriety by a public entity, not a private organization's propriety business information. Moreover, the specific dollar figure was not directly relevant to the specific discovery disputes that the Court addressed during the June 12 hearing.

The requested relief is necessary and narrowly tailored to protect TIAA's confidentiality, and maintaining that confidentiality does not deprive the public of critical information. Thus, TIAA respectfully requests that the Court permit the narrowly targeted, limited redaction in the publicly-available version of the June 12, 2020 transcript (Dkt. 110).

Respectfully,

/s/ James O. Fleckner

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cc: Counsel of record via ECF

Defendant's request to redact is granted.

SO ORDERED:

7/2/2020


HON. ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Exhibit 1

NITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
HALEY, : Docket #17cv855
Plaintiff, : 1:17-cv-00855-JPO-RWL
- against - :
TEACHERS INVESTMENT AND ANNUITY : New York, New York
ASSOCIATION, : June 12, 2020
Defendant. :
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE ROBERT W. LEHRBURGER,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

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2 relevant to this case for like 980,000 loans, is \$ [REDACTED]
3 [REDACTED]. And what this case is about is various prohibited
4 transactions under ERISA because they were taking too much,
5 they were charging amounts that were way beyond reasonable,
6 way beyond adequate, and what they were doing was profiting
7 not just from this loan interest but also from the
8 collateral and what they were taking on the collateral. If
9 this were a situation in which the collateral earns 3
10 percent and TIAA turns that 3 percent earned on the
11 borrowing participants collateral over to the borrowing
12 participants, then it would be entirely different, but what
13 we're dealing with is a situation where TIAA makes a lot of
14 money on the loan interest and a lot of money on the
15 collateral that is invested that, of course, is the
16 collateral of the borrowing participants. So it's absolutely
17 critical to us that we find out what that spread was on the
18 collateral earnings and we understand the position of TIAA
19 to be they'll tell us what the crediting rate is, that is
20 what percent you earn as a borrowing participant on the
21 collateral, but we can't find out what TIAA earned on that
22 collateral. If we knew what TIAA earned then we could get a
23 better sense of the total amount that TIAA profits from the
24 collateralized loan program. And that's key to our case.

25 THE COURT: Thank you for explaining that. I think